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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ANDREW ALEXANDER
CORRALES,

Defendant and Appellant.

G050378

(Super. Ct. No. 13NF3385)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Dan McNerney, Judge. Affirmed as modified with directions.

Ellen M. Matsumoto, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney General, Anthony DaSilva and Peter Quon, Jr., Deputy Attorneys General, for Plaintiff and Respondent.

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A jury convicted defendant Andrew Alexander Corrales of five counts of child endangerment (Pen. Code, § 273a, subd. (a); counts 1-5; all statutory citations are to the Penal Code unless noted otherwise), assault with a deadly weapon (§ 245, subd. (a)(1); count 6), domestic battery with corporal injury (§ 273.5, subd. (a); count 7), three counts of making criminal threats (§ 422, subd. (a); counts 8-10), evading an officer while driving recklessly (Veh. Code, § 2800.2; count 12), and four counts of false imprisonment (§ 236/237, subd. (a); counts 14-17). The jury found he personally used a knife (§ 12022, subd. (b)(1)) as to several of the offenses. The trial court found Corrales previously had suffered a first degree robbery conviction in January 2005 that qualified as both a strike under the Three Strikes law (§§ 667, subd. (d); 1170.12, subd. (b) & (c)(1)) and a serious felony under section 667, subdivision (a). The court also found he had served two separate prison terms within the meaning of section 667.5, subdivision (b). Corrales contends the trial court erroneously punished him twice for the same act in violation of section 654 by imposing a term for recklessly evading officers (count 12) in addition to terms for child endangerment (counts 1 and 2). We agree and modify the judgment accordingly.

I

FACTUAL AND PROCEDURAL BACKGROUND

In September 2013, 12-year-old A.C. lived in Anaheim with his mother, Vanessa P., his sister, E. (age 10), and his brother, Ad. (age 7). Corrales, the children's father, visited and sometimes spent the night, typically on weekends.

On the morning of September 26, before school, A.C. heard his parents arguing. A. told an Anaheim police officer Corrales was "getting all crazy" because he believed mother was hiding information on her cell phone. When Corrales grabbed a knife the children took refuge in mother's bedroom and locked the door. They hid in a closet, covered themselves with a blanket, and cried. Corrales kicked in the door and

ordered the children to go to their own bedroom. At some point during the incident, Corrales stabbed mother in the leg with a knife.

The next afternoon, the parents resumed their argument. Corrales accused mother of deleting information from her cell phone. He grabbed a knife, threw mother's crutches across the room, and told the children to go to mother's room. Mother fled the apartment with Corrales in pursuit, but he returned to gather the children in mother's car and drive to the homes of various relatives. He threw the knife out of the car along the way. E. exited the car at an uncle's home and did not return.

A. grew frightened when police vehicles began pursuing them and his father "started like driving fast." He estimated their speed at 80 miles an hour. Corrales "would go into one lane into the other" and ran red lights. The tires exploded, but Corrales kept driving until he crashed into a center divider. Both boys were crying and had in mind Corrales's warning to them that "if a cop pulls him over he's not gonna stop, he's gonna crash and all of us is gonna go with him."

According to Ad., the day before the car chase Corrales began going through mother's "stuff and looking like at everything" because he believed mother was cheating on him. During the argument one of the parents told the children to go into mother's bedroom, and mother said to lock the door. The children hid in the closet, frightened and crying. Corrales demanded they open the door, and then kicked it in. The children came out of the closet, and Ad. heard Corrales say he might stab mother. Ad. told a police officer Corrales grabbed a serrated bread knife from the kitchen and stabbed mother in the leg after she refused to give him her car keys and credit card.

After the children arrived home from school the next afternoon, Corrales grew angry again after checking mother's phone. He grabbed a knife, put it in his back pocket, and told mother if she did not show him something on the phone he would stab her in the throat. Mother ran from the apartment to a neighbor's yelling for help. Corrales told the children to hurry and get into mother's car. When police officers

attempted to stop them, Corrales drove “crazy.” Ad. and A. hid under a blanket because they thought the officers might “shoot the window” and Corrales earlier had declared “if a cop like chased him, he wouldn’t pull over, and the cops might crash into him.”

Officers testified the 15 to 30 minute pursuit in light traffic began around 9:00 p.m. in Norwalk. Corrales ran several red lights and drove 55 miles an hour in a 40 mile an hour zone until deputies deployed spike strips, which caused all four tires to deflate and Corrales’ speed to decrease to less than 30 miles per hour. Corrales continued driving on the rims, drove on the wrong side of the road several times, and ran several more red lights before the pursuit concluded in Anaheim with officers pinning the car against a center divider.

Corrales testified he and Vanessa argued because she was texting another man. The day after their argument, he awoke “having weird symptoms” and found a pill in his coffee. Vanessa denied putting a pill in his drink, and this spurred another argument. When mother disappeared, he told the children they were going to their grandmother’s home. He forgot his wallet so he went to relatives’ homes to get money. He was on his way to the grandmother’s home when he “started getting weird symptoms.” He felt drunk and paranoid, and began hallucinating and “just . . . took off when the [police] sirens went on.” He could not stop after the tires went flat because the brakes did not work.

Following trial in March 2014, a jury convicted Corrales as noted above. In June 2014, the trial court imposed a prison sentence of 28 years, and four months. As relevant here, the sentence included a 16-month term for recklessly evading a police officer and a total of 10 years and 8 months for endangering his two boys while evading the pursuing officers.

II

DISCUSSION

Corrales contends the court erred in failing to stay under section 654 the 16-month term for reckless evasion. We agree.

Corrales did not raise a section 654 claim in the trial court. But a court acts in excess of its jurisdiction by imposing an unauthorized sentence when it erroneously stays or fails to stay execution of a sentence under section 654. (*People v. Scott* (1994) 9 Cal.4th 331, 354, fn. 17.) Corrales therefore is not precluded from raising a section 654 claim for the first time on appeal. (See *People v. Flowers* (1982) 132 Cal.App.3d 584, 589 [“The question of the applicability of Penal Code section 654 was not raised at the sentencing hearing, but the absence of any objection does not obviate our duty to review the section 654 question”].)

A person commits child endangerment under section 273a when: “under circumstances or conditions likely to produce great bodily harm or death . . . having the care or custody of any child . . . willfully causes or permits that child to be placed in a situation where his or her person or health is endangered”

Vehicle Code section 2800.2 provides: “(a) If a person flees or attempts to elude a pursuing peace officer in violation of Section 2800.1¹] and the pursued vehicle is driven in a willful or wanton disregard for the safety of persons or property, the person

¹ Vehicle Code section 2800.1 provides: “(a) Any person who, while operating a motor vehicle and with the intent to evade, willfully flees or otherwise attempts to elude a pursuing peace officer’s motor vehicle, is guilty of a misdemeanor punishable by imprisonment in a county jail for not more than one year if all of the following conditions exist: [¶] (1) The peace officer’s motor vehicle is exhibiting at least one lighted red lamp visible from the front and the person either sees or reasonably should have seen the lamp. [¶] (2) The peace officer’s motor vehicle is sounding a siren as may be reasonably necessary. [¶] (3) The peace officer’s motor vehicle is distinctively marked. [¶] (4) The peace officer’s motor vehicle is operated by a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, and that peace officer is wearing a distinctive uniform.”

driving the vehicle, upon conviction, shall be punished [by incarceration and fines]. [¶]

(b) For purposes of this section, a willful or wanton disregard for the safety of persons or property includes, but is not limited to, driving while fleeing or attempting to elude a pursuing peace officer during which time either three or more violations that are assigned a traffic violation point count under Section 12810 occur, or damage to property occurs.”

Section 654 provides in relevant part: “(a) An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision.”

As the Supreme Court explained in *Neal v. State of California* (1960) 55 Cal.2d 11 (*Neal*), under the plain terms of section 654, “‘If only a single act is charged as the basis of . . . multiple convictions’ . . . the defendant can be punished only once.” (*Id.* at p. 19.) *Neal* also observed that “[s]ection 654 has been applied not only where there was but one ‘act’ in the ordinary sense . . . but also where a course of conduct violated more than one statute” [Citation.]” (*Neal*, at p. 19.) Whether the aggregate conduct “is divisible and therefore gives rise to more than one act within the meaning of section 654 depends on the intent and objective of the actor. If all of the offenses were incident to one objective, the defendant may be punished for any one of such offenses but not for more than one.” (*Neal*, at p. 19.)

Here, the Attorney General argues Corrales is subject to multiple punishment under a course of conduct analysis because his objective in evading pursuing officers was independent from his intent to endanger his sons. The Attorney General reasons Corrales’s reckless driving endangered “the safety of victims more than just his sons” and therefore he entertained separate criminal objectives.

The Attorney General’s argument is premised on the erroneous assumption Corrales’s driving comprised more than one act. Although Corrales committed several vehicle code violations, all were “‘closely connected in time’” and therefore formed part

of a single transaction. (*People v. Datt* (2010) 185 Cal.App.4th 942, 951 [no unanimity instruction required for crime of evading police officer while driving recklessly because the defendant's vehicle code violations were closely connected in time and therefore treated as a single transaction under the continuous conduct exception]; *People v. Garcia* (2003) 107 Cal.App.4th 1159, 1164 [Vehicle Code section 2800.2 cannot be splintered into more than one offense because it forms a continuous course of conduct].)

Here, Corrales's *one act* of reckless driving underpins both the evasion and endangerment convictions and therefore precludes multiple punishment. An analysis based on the actor's intent and objective applies only when a defendant has committed multiple criminal acts supporting multiple charges. But a single criminal act resulting in multiple criminal convictions provides no basis to detour into an intent and objective analysis. "Insofar as a single act is charged as the basis for the conviction . . . , the defendant can only be punished once." (*Neal, supra*, 55 Cal.2d at p. 9.) Accordingly, section 654 precluded separate punishment.

III

DISPOSITION

The judgment is modified (§ 1260) to stay the consecutive 16-month term imposed for reckless evasion (count 12). In all other respects the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment and to forward a certified copy to the Department of Corrections and Rehabilitation.

ARONSON, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

MOORE, J.